(क्रि) 469/98

XII-189 (Jail) C J.P.R./9-94

CF0000060547

APPEAL OF PRISONER

(2)

No दण्डित बन्दी क्रमांक Name कोटेलाल @ कोटे सिंह जाति- बैगा

Father's name बुटार बैगा ग्राम- चुमाटेला थाना- गौरेला

Residence जिला- बिलासपुर (म.प्र.) Age - 30 वर्ष

Sentenced to धारा - 302 भा.द.सं. on 11-2-98

Under Section सजा- आजीवन-कारावास by ~~न्यायालय सत्र न्यायाधीश~~ श्री. डी.सी. यदु महोदय बिलासपुर (म.प्र.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 16 - 2 - 98

4 Whether the prisoner wishes to be represented or not हां

No दण्डित बन्दी क्रमांक Name कोटेलाल @ कोटे सिंह पि० बुटार बैगा

Confined in 733/56 Jail बिलासपुर (मध्य प्रदेश)

No. _____ Dated 11-2-98 1998

Forwarded to the रजिस्ट्रार महोदय उच्च न्यायालय जबलपुर (म.प्र.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
Superintendent
जिला जेल बिलासपुर

Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

_____

Date of receipt in Appellate court _____

(P. T. O.)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 469 OF 1998

Chhotelal @ Chhote Singh

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Judge
21-6-2006

Hon'ble Shri Justice V.K. Shrivastava

Sd/-
V.K. Shrivatava
Judge

post for 21-6-2006

Sd/-
Fakhruddin
Judge

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 469/1998

Chhotelal @ Chhote Singh

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri V.K.Shrivastava,JJ

Present : Smt. Kiran Jain, counsel for the appellant.
Shri U.N.S. Deo, Govt. Advocate/Addl. Public Prosecutor with Shri Akhil Mishra, Panel Lawyer, for the State.

J U D G M E N T

Per Fakhruddin, J.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment delivered on 11/2/1998 in Sessions Trial No.164/97 by the VIIth Additional Sessions Judge, Bilaspur, whereby he has been convicted under Section 302 of the Indian Penal Code for committing murder of his wife Murko Bai & his elder brother Sahantu and sentenced to undergo imprisonment for life.

3. Briefly stated the prosecution story is that on 23/3/1997 when the Kotwar of Village-Gumatola, namely, Kanasram was in the house, Mangal Singh, Sarpanch, came and informed that one person of Village Gumatola has killed his wife and has beaten his elder brother who is unconscious. Hearing this, Kanasram alongwith Mangu went to the Village, where they found that Murko Bai is dead and Sahantu is lying unconscious. Sahantu's wife namely Puniya Bai (PW-2) and the father-in-law of the accused namely Chetu were weeping. He asked from Puniya Bai, who told that Chhotelal has done this. Kanasram lodged the report (Ex.P/1) in the Police Station. Murko Bai died on the spot

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and Sahantu was taken to the Government Hospital where he died and the Ward Boy Dhanesh Tiwari sent the information of his death which was recorded by the Police on 24-3-1997. The Police prepared the panchnama, both the dead bodies were sent for postmortem which was conducted by Dr. L.N. Patel (PW-8). Ex.P/11 is the postmortem report of the deceased Murko Bai and the cause of death shown to be the head injury. Ex.P/10 is the postmortem report of the deceased Santhanu and the cause of death shown to be the severe head injury. The statements of PW-2 Puniya Bai and other witnesses were recorded and the challan was filed.

4. The appellant abjured the guilt and contended that he has been falsely implicated. The Court below relying on the evidence of witnesses convicted the accused/appellant and sentenced him as narrated above.

5. Counsel for the appellant contended that so far as evidence of Puniya Bai (PW-2) is concerned, it is not reliable. It is submitted that Puniya Bai is the wife of the deceased and is an interested witness. It is also contended that Mangu, who was the witness, has not been examined. It is stated that an adverse inference should have been drawn.

6. Counsel for the State, on the other hand, contended that the evidence of PW-2 Puniya Bai and other material on record have been rightly relied upon in arriving at the finding.

7. Perused the record. PW-2 Puniya Bai is the wife of the deceased Sahantu. She stated in her statement that accused is her brother-in-law (Devar). She further stated that the accused was beating his wife Murko Bai by rammer (*musal*) and her husband Sahrantu was trying to save Murko Bai. Accused also gave a rammer (*musal*) blow on his head.

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On receiving the injuries, Murko Bai died on the spot and Sahantu became unconscious. She herself has seen the incident. She shouted and ran away towards the *Basti* where she narrated the incident to the villagers that Chhote Singh has killed his wife and her husband. She stated that the accused ran away from the spot. She also stated that the accused beat her husband as he intervened and tried to save the appellant's wife Murko Bai. She has been cross-examined at length. On being cross-examined, in para 4 she stated that when she went from the house, she saw that the accused was beating his wife, who had fallen down and then he beat her husband Sahantu. She was suggested that the appellant is the person of unsound mind. She denied and stated that the appellant is not the person of unsound mind. She further denied that as her husband died in the house of the accused/appellant, therefore, she is implicating the accused. She again stated that the accused ran away from the spot with the rammer. P.W. 1 Kanasram also supported the version of her statement. In his statement, P.W.1 Kanasram stated that on reaching to the house of the accused he saw that the wife of the accused was lying dead in the courtyard and the brother of the accused was lying unconscious. He further stated that the wife and brother of the accused received injuries on their head and blood was oozing.

8. P.W.8 Dr. L.N. Patel, who conducted the postmortem, was also examined. In his statement, he narrated the injuries found on the bodies of the deceased persons. Ex.P/11 is the postmortem report of the deceased Murko Bai and Ex.P/10 is the postmortem report of the deceased Sahantu, which read as under:

> *"Ex.P/11- Rigor mortis was present in lower limbs. Bleeding from nose present. Abrasion on the left knee joint in the size of 2 x 2 cm. Haematoma and contusion were present over left half of the forehead*

and over left hyegonatic area. Haematoma scalp top whole. The cause of death was due to coma caused by head injury. The death was homicidal in nature.

Ex.P/10-Rigor mortis was present all over limbs. Blood was coming from right ear and nostrils. Swelling & haematoma around left eye and over left hyegonatic area. Abrasion on the right wrist posteriorly. Bleeding from nose and right ear present. The cause of death was due to coma caused by severe head injury. The death was homicidal in nature."

9. We have gone through the evidence minutely. The incident took place in the house of the accused. The appellant was beating his own wife, namely, Murko Bai. Seeing this, the appellant's brother, namely, Sahantu came to rescue her. The appellant also gave rammer blow on the head of Sahantu, who became unconscious and was ultimately shifted to the hospital where he succumbed to the injuries.

10. So far as evidence of interested witness is concerned, the Hon. Apex Court in the case of ***Harbans Kaur and another vs. State of Haryana*** reported in ***2005 AIR SCW 2074*** held as under:

"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard."

In the instant case, we found that the evidence of P.W.2 Puniya Bai is such on which the implicit reliance can be placed. She is the natural witness and witnessed the incident. She is not the tutored witness. There is no infirmity in her evidence. There is also nothing on record to show that the appellant was insane at the time of commission of the crime.

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11. At this stage, counsel for the appellant contended that at the most the offence is punishable under Section 304 IPC as there was no intention to kill the deceased persons.

12. There is no substance in the aforesaid contention. The manner in which the accused beat his wife and his elder brother by rammer and inflicted the injuries vide Ex.P/10 & P/11, the intention is absolutely clear.

13. We are of the considered opinion that the finding, conviction and sentence passed by the trial court do not suffer from any infirmity which may call for any interference by this Court in its appellate jurisdiction.

14. Accordingly, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge

H/-